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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/914,793

Applicant(s)

VAN TOL ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 9-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-12,15,21,22 and 24-28 is/are rejected.
- 7) ☒ Claim(s) 14,16-20 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 15, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,102,479 to Newfield in view of U.S. Patent No. 4,880,133 to Cullinane.

Regarding Claim 12, Newfield teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Newfield #9) and a series of clamping elements (Newfield #7 and 8) which are fixed to the carrier and which are each adapted to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings, wherein the holder transports whole plant cutting placed in the hold (Newfield Fig. 4); and the clamping elements each comprise at least two parts (Newfield Fig. 3 there are two element #8 and 7 one on each side of the clamp element depicted in Fig.3), at least one of which is connected resiliently to the carrier (Newfield Fig. 3 #8 is connected via #6); and wherein both parts are connected to the carrier such that the non-loaded situation both parts are separated on either side by a

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narrow gap (Newfield Fig. 3 clearly shows that there is a gap between the two elements #7 and 8 on each side of the clamp and Fig. 4 shows that there is also a gap between each clamping member which would be an even larger gap when the plant cuttings are not present in Fig. 4).

Newfield is silent on wherein the parts each take substantially the form of a semi-cylindrical sleeve. However, Cullinane teaches a resilient clamp holder with semi-cylindrical sleeves (Cullinane Fig. 3 #51 and 52). It would have been obvious to one of ordinary skill in the art to modify the teachings of Newfield with the teachings of Cullinane at the time of the invention since the modification is merely a change in shape/size while performing the same intended clamping function of a vertically suspended member modified to provide additional support to the stem of the plant cutting to prevent snapping [*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)].

Regarding Claim 15, Newfield as modified teaches that each of the parts is connected to the carrier by at least two bridges (Newfield Fig. 3 element #8 and 7 is connected by bridges 6 on either side of element #5, bridge is taken to mean "links" and Cullinane Fig. 3 #40, 41).

Regarding Claim 21, Newfield as modified teaches that the clamping elements are connected to the carrier (Newfield screw #5 and Cullinane Fig. 3 #44 and 43) and since the clamping elements are wire they are capable of tilting on an axis extending substantially at a right angle to the plane of the carrier

Regarding Claim 22, Newfield as modified teaches that each of the parts of the clamping elements are connected to the carrier by means of a connection subject to torsion (Newfield screw 35).

Claims 1, 3-6, 9, 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,102,479 to Newfield in view of U.S. Patent No. 5,762,212 to Pomerantz.

Regarding Claims 1, 6 and 27, Newfield teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Newfield #9) and a series of clamping elements (Newfield #7 and 8) which are fixed to the carrier and which are each adapted to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings, wherein the holder transports whole plant cutting placed in the hold (Newfield Fig. 4).

Newfield teaches a carrier (i.e. Newfield lath #9 is made of wood via the hatch markings illustrated in Fig. 2), but is silent on the carrier is substantially flexible or is divided into substantially rigid pieces which are coupled in mutually flexible manner. However, Pomerantz teaches a holder/carrier constructed out of flexible plastic/wood (Pomerantz abstract last line and element #10 and Col. 4 line 35-39 teaches that wood fiber is flexible and thus Newfield may inherently be flexible but does not explicitly teach

this). It would have been obvious to one of ordinary skill in the art to modify the teachings of Newfield with the teachings of Pomerantz at the time of the invention since the modification is merely the selection of a known material of a particular density that enables flexibility. It is **general knowledge of one of ordinary skill in the art** to select a fiber density that enable flexibility for the notoriously well-known advantage of maneuverability to fit certain space parameters, to have some give when placed in windy locations to prevent it from snapping, for ease of assembly and for ease of preloading as taught by Pomerantz (Pomerantz Col. 4 line 47-55).

Regarding Claim 3, Newfield as modified teaches that the carrier extends as a strip and that the clamping elements are fixed at regular mutual distances (Newfield Fig. 4 #9).

Regarding Claim 4, Newfield as modified teaches that the clamping elements are each fixed on the same side of the carrier (Newfield Fig. 4 #7 and 8).

Regarding Claim 5, Newfield as modified teaches the mutual distance between the clamping elements on one side of the carrier is greater than or equal to the mutual distance between the center of the clamping elements so that two carriers with their clamping elements can be placed between each other (Newfield Fig. 4 spacing of elements #7).

Regarding Claim 9, Newfield as modified teaches that the clamping elements have been made from softer material than the carrier (Newfield clamps are made from wire and wire can be viewed as being more malleable than plastic or wood).

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Regarding Claim 11, Newfield as modified teaches that the clamping elements are each at least two parts, at least one of which is connected resiliently to the carrier (Newfield Fig. 3 #6, 7, 8).

Claims 10 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,102,479 to Newfield in view of U.S. Patent No. 5,762,212 to Pomerantz as applied to claims 1 and 9 above, and further in view of U.S. Patent No. 5,779,066 to Drower.

Regarding Claim 10 and 24, Newfield as modified teaches molding (Cullinane abstract last line), but is silent on the clamping elements are connected to the carrier and both the holder and the clamping elements are manufactured by injection molding. However, Drower teaches manufacturing a carrier out of injection molding (Drower Col. 4 line 3). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Newfield with the teachings of Drower at the time of the invention since the modification is merely an engineering design choice involving the selection of an old and notoriously well-known means of fabrication selected based on production cost and/or ease of manufacturing and for consistency of reproducible components.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,102,479 to Newfield in view of U.S. Patent No. 5,762,212 to Pomerantz as applied to claim 1 above, and further in view of U.S. Patent No. 3,027,014 to Lindblom.

Regarding Claim 7, Newfield as modified teaches the carrier is divided into substantially rigid pieces (Newfield Fig. 4 #10), but is silent on the substantially rigid pieces are coupled in mutually flexible manner. However, Lindblom teaches coupling rigid carrier pieces in a mutually flexible manner (Lindblom #23 and #13D). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Newfield with the teachings of Lindblom at the time of the invention for the decorative and aesthetic appeal taught by Lindblom.

Claims 1, 3-6, 9, 10, 24, 25, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,339,967 to Valiulis in view of U.S. Patent No. 2,102,479 to Newfield

Regarding Claims 1, 3-6, 25, 26, and 28, Valiulis teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Valiulis #19) and a series of clamping elements (Valiulis #23 and 24) which are fixed to the carrier and which are each adapted to clamp a plant cutting, and the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings, and wherein the carrier is manufactured from flat inherently flexible plastic foil material (Valiulis Col. 2 line 20; the tabs of Valiulis #24 are flexible and are manufactured out of the same material as the carrier #19 and thus the carrier is inherently flexible) in which at least three lips (Valiulis Fig. 1 #23 and 24) are punched at the position of each



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clamping element, which lips are adapted (merely means they are capable of performing the function) to fixedly clamp the plant cuttings.

Valiulis teaches clamping merchandise, but does not explicitly teach wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other and wherein the holder transports whole plant cutting placed in the hold. However, Newfield teaches plant merchandise (i.e. tobacco plant cuttings) in clamps attached to a carrier (Newfield Fig. 4). It would have been obvious to one of ordinary skill in the art to modify the teachings of Valiulis with the teachings of Newfield at the time of the invention since the modification is merely the selection of an alternate equivalent piece of merchandise modified for the orderly storage and retail sale of plant cuttings as taught by Newfield.

Regarding Claim 9, Valiulis as modified teaches that the clamping elements have been made from softer material than the carrier (Newfield #7 wire and #9 wood).

Regarding Claims 10 and 24, Valiulis as modified is silent on injection molding. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Valiulis at the time of the invention since the modification is merely an engineering design choice involving the selection of an old and notoriously well-known means of fabrication selected based on production cost and/or ease of manufacturing and for consistency of reproducible components.

***Allowable Subject Matter***

Claim 13 is allowed.

Claims 14, 16-20, 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 08 August 2005 have been fully considered but they are not persuasive. Applicant's arguments were found persuasive regarding the positive recitation of the plant cuttings for example in claims 1 and 25 in combination with the adapted to language. Applicant's amendment of the "sleeve" language necessitated new grounds of rejection presented in the preceding paragraphs.

Multiple rejections were necessary to address all of the limitations of the independent claims that are not considered to be currently in condition for allowance. For example, the teachings of Valiulis were cited to address the limitations of claim 25, but also read on the limitations of claim 1 and so that rejection had to be carried through addressing all of the appropriate claims and thus claim 1 was rejected multiple times with different pieces of art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Newfield teaches a carrier (i.e. Newfield lath #9 is made of wood via the hatch markings illustrated in Fig. 2), but is silent on the carrier is substantially flexible or is divided into substantially rigid pieces which are coupled in mutually flexible manner. However, Pomerantz teaches a holder/carrier constructed out of flexible plastic/wood (Pomerantz abstract last line and element #10 and Col. 4 line 35-39 teaches that wood fiber is flexible and thus Newfield may inherently be flexible but does not explicitly teach this). It would have been obvious to one of ordinary skill in the art to modify the teachings of Newfield with the teachings of Pomerantz at the time of the invention since the modification is merely the selection of a known material of a particular density that enables flexibility. It is **general knowledge of one of ordinary skill in the art** to select a fiber density that enable flexibility for the notoriously well-known advantage of maneuverability to fit certain space parameters, to have some give when placed in windy locations to prevent it from snapping, for ease of assembly and for ease of preloading as taught by Pomerantz (Pomerantz Col. 4 line 47-55).

New claims 27 and 28 merely present "to reduce space taken up by the holder during storage or transportation" which is merely functional language and does not provide any structural limitations to the claims.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

05 October 2005



Peter M. Poon  
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10/6/05